assistance undesirable may not be the most desirable policy under all circumstances.[21]

C. E. C.

THE DOCTRINE OF MUTUALITY IN SPECIFIC PERFORMANCE CASES

To Lord Fry, specific performance without "mutuality" was inconceivable.[1] The supposed principle proves, however, on careful analysis to have so many exceptions as to be valueless as a generalization.[2] Indeed when all the exceptions to Lord Fry's broad statement are considered, the true doctrine of want of mutuality as a defense to specific performance narrows down to this: Equity will not grant the plaintiff specific performance of a bilateral contract if, after the defendant's forced performance, the plaintiff's own obligation will remain unperformed and is of such a nature that, at the time for its fulfillment, equity would, on grounds independent of mutuality, refuse specific performance of it,—the one possible limitation to this rule being that equity might give the plaintiff specific performance if the defendant's assumed common law remedy for damages would be fully adequate.[3] But some jurisdictions, following the lead of the federal Supreme Court, have carried the supposed broad doctrine of mutuality to the extreme extent of applying it to cases where there is no want of mutuality of remedy as such, but only a want of mutuality in the substantive rights and powers of the parties.[4] Thus it has been held that covenants in leases

[21] Since the above was written, it has been brought to the writer's attention that Congress, by an act approved October 6, 1917, has amended the Act of 1789, cited in notes 7 and 8 *supra*, by adding to the saving clause the words: "and to claimants the rights and remedies under the workmen's compensation law of any state." See 244 Fed. 420 (General and Permanent Acts of Congress). Does not this amendment lead to an interesting dilemma? If the Act of 1789 is constitutional—and it has always been so considered, and was so considered by the majority in the *Jensen* case—it would seem beyond question that the amendment is also constitutional. Yet the majority in the *Jensen* case hold that state compensation acts interfere with the grant of admiralty jurisdiction contained in the United States Constitution. Hence the amendment must be unconstitutional. Cf. Comment by Professor Wright, 6 CAL. L. REV. 72, n. 18. The writer of this interesting comment states that the holding of the majority in the *Jensen* case that the saving clause of the act did not apply was merely a *dictum*. It is difficult to see how the majority in reaching their conclusion could have avoided a direct decision either that the statute was unconstitutional or that it did not apply.

[1] Fry, *Spec. Perf.* (3d ed.) 225.

[2] See 36 *Cyc.* 621.

[3] *Wakeham v. Barker* (1887) 82 Cal. 46, 22 Pac. 1131 (exemplifying the true rule); cf. *Jones v. Newhall* (1874) 115 Mass. 244 (inferentially supporting the suggested limitation).

[4] *Rutland Marble Co. v. Ripley* (1869, U. S.) 10 Wall. 339.

of oil or mineral lands would not be specifically enforced against the lessor when the lessee had the power to terminate his tenancy without notice or on short notice.[5] A recent decision in Indiana is to this effect. *Advance Oil Co. v. Hunt* (1917, Ind.) 116 N. E. 340. Such an application of the doctrine of mutuality is unfortunate. The lessor enters into the lease because he expects certain advantages from making it and is willing that the lessee should protect himself against possible losses by the option to terminate. It is not unfair to the lessor to hold him to his bargain. The refusal to do so is not only unjust to the lessee but also, in some jurisdictions, injurious to the development of the mineral wealth of the community. Such refusal in one case[6] resulted in the immediate enactment of a statute to remedy the evil.[7] Other states have, without the aid of a statute, repudiated this application of the doctrine of mutuality.[8] The federal Supreme Court itself has, in the reasoning of a late case, virtually repudiated its earlier doctrine.[9] The remedy sought in that case, as in the principal case, was an injunction against interference with the plaintiff's possession by parties claiming under a subsequent lease. The court distinguishes such a suit from a bill for the specific performance of an executory contract, and considers the desired injunctive relief as simply the giving of adequate protection to the plaintiff's vested leasehold interest. In this view, the inapplicability of the supposed doctrine of mutuality is even more apparent. It is unfortunate that in the principal case the Indiana court followed the authority of its own earlier cases and the *Rutland Marble Co.* case,[10] entirely overlooking the later case of *Guffey v. Smith.*[11] A study of that case would perhaps have led to a reëxamination of the soundness of the doctrine of mutuality and to a more mature consideration of the justness of the plaintiff's claim. It is interesting to note that as the law now stands in Indiana, Illinois and such other states as still cling to the old formula of mutuality, a plaintiff lessee under a lease which gives an option to terminate, will be denied equitable relief in the state courts, but may secure it if he can bring his suit in the federal courts.

C. I.

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[5] *Rust v. Conrad* (1881) 47 Mich. 449, 11 N. W. 265; *Watford Oil & Gas Co. v. Shipman* (1908) 233 Ill. 9, 84 N. E. 53.

[6] *Rust v. Conrad, supra.*

[7] See *Grummett v. Gingrass* (1889) 77 Mich. 369, 43 N. W. 999.

[8] *Philadelphia Ball Club v. Lajoie* (1902) 202 Pa. St. 210, 51 Atl. 973; *Gregory Co. v. Shapiro* (1914) 125 Minn. 81, 145 N. W. 791; *Thurber v. Meves* (1897) 119 Cal. 35, 50 Pac. 1063.

[9] See *Guffey v. Smith* (1914) 237 U. S. 101, 35 Sup. Ct. 526.

[10] *Supra,* note 4.

[11] *Supra,* note 9.